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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,683	03/31/2004	James N. Rothbarth	RHB 8982.4	8322
321	7590	03/27/2006	EXAMINER	
SENNIGER POWERS			ROSE, HELENE ROBERTA	
ONE METROPOLITAN SQUARE				
16TH FLOOR			ART UNIT	PAPER NUMBER
ST LOUIS, MO 63102				2163

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/814,683	ROTHBARTH ET AL.
	Examiner Helene R. Rose	Art Unit 2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on March 31, 2004.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/24/04 & 5/14/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**Detailed Action**

1. Claims 1-14 have been presented for examination.
2. Claims 1-14 have been rejected.

**Information Disclosure Statement**

3. The information disclosure statement (IDS) filed on 11/24/2004 and 5/14/2004, accordingly, the information disclosure statement has been considered by the examiner.

**Claim Rejections – 35 U.S.C- 112**

4. Claim 1 is rejected under 112, second paragraph. Claim 1 recite the following limitation “or”, this limitation renders the claim vague and indefinite, because the term “or” is considered to be alternative language. Therefore, the limitation renders the claim vague and indefinite, because it is unclear as to how the examiner should interpret the claim limitation as it relates to “or”.

**Claim Rejections – 35 U.S.C – 102**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey, III (hereinafter Bailey, Date of Patent: August 19, 1997).

**Claims 1 and 13:**

Regarding claims 1 and 13, Bailey teaches a method for facilitating the transfer of back-up copies of one or more files (Figure 1, diagram 54, column 5, lines 31-33, wherein files are defined, and column 5, lines 24-26, wherein transferred is defined, Bailey) from a first computer to a second computer (Figure 1, all features and column 4, lines 63-66, wherein the first computer is interpreted to be client computer and the second computer is interpreted to be the backup computer, Bailey); comprising:

designating files from the first computer for which back-up copies will be transferred to the second computer (column 5, lines 24-33, wherein data that is to be backed up is transferred via a transmission medium to a backup computer at the remote backup site, Bailey);

selectively (column 3, lines 29-30, wherein client selected string of characters, Bailey) transferring the designated files and file data from the first computer to the second computer via a communication network or from the first computer to a portable computer readable medium based on a total size of the files being transferred (columns 5-6, lines 59-67, and lines 1-4, wherein transferred stated in column 5, lines 24-26, and the highest priority files are selected for transmission to the back up site and the lower priority files are selected for subsequent transmission, i.e. transmission is interpreted to be the physical medium over which data is transmitted or The type of cable/wireless system used to connect the network devices, predetermined size within files are analyzed, Bailey);

receiving (Figure 8, diagram 420, defines a method of receiving, Bailey), at the second computer, the selectively transferred files and file data, wherein said received file data includes

authentication data for determining whether the first computer is authorized to store back-up copies on the second computer (column 6, lines 9-21, wherein first level of encryption is defined and wherein the second level of encryption is defined, Bailey); and

storing, at the second computer, the received files when the first computer is determined to be authorized (Figure 10, all features and column 57-67, wherein encoding process is defined and initialized and column 16, lines 9-11, wherein if the file is an encoding type file, the method follows yes, where the file data is read, Bailey).

**Claim 2:**

Regarding claim 2, Bailey teaches wherein the designated files and file data are transferred from the first computer to a portable computer readable medium when the total size of the files to be transferred is greater than a target amount, said target amount defined by a user of the first computer (Figure 6, diagram 570, wherein the greater than symbol is defined and column 9, lines 23-30, wherein changes to the sector are large and the goal is to store only relatively small changes, Bailey).

**Claim 3:**

Regarding claim 3, Bailey teaches delivering the portable computer readable medium to a user of the destination computer (column 10, lines 57-60, wherein available transmission time can be set in several ways including a default value, a client determined value, and a value transmitted by the backup site to the client site, Bailey); and

transferring the files from the delivered portable computer readable medium to the second computer for storage (column 5, lines 26-33, wherein the backup computer includes a memory that includes a program registry that stores a list of many commonly used, commercially

available programs, and wherein the client files, i.e. interpreted to be the first computer, to be backed up are stored on a backup storage medium and column 10, lines 30-34, wherein transmitting files from the client site to the backup site in sequence based on the priority of the files and capacity of the transmission medium, Bailey).

**Claim 4:**

Regarding claim 4, Bailey teaches wherein designating files includes displaying a first input form on a display linked to the first computer, said first input form receiving input data from a user (Figure 8, diagram 420 and 422, Bailey), and said input data designating the one or more files to be copied (Figure 8, diagrams 420 and 430, Bailey) and transferred to the portable computer readable medium (Figure 8, diagram 436, and 438, wherein portable is interpreted to a portable storage medium, Bailey).

**Claim 5:**

Regarding claim 5, Bailey teaches wherein first transferring files include encrypting the designated files prior to transferring the designated files to the portable computer readable medium (Figure 1, diagrams 36, and 44, wherein encryption occurs first and column 3, lines 18-20, wherein data blocks within each file are examined, if they are identical to prior data blocks transmitted to the backup site during a previous backup operation, Bailey).

**Claim 6:**

Regarding claim 6, Bailey teaches wherein transferring files includes transferring authentication data to the portable computer readable medium (Figure 1, diagrams 36, and 44, wherein encryption program is interpreted to encode (scramble) information in such a way that it is unreadable to all but those individuals possessing the key to the code, and sent to the

transmission medium which is interpreted to be the process of converting encrypted data or text back to plain data or text, Bailey).

**Claim 7:**

Regarding claim 7, Bailey teaches wherein the receiving includes retrieving first authentication data from the portable computer readable medium (column 17, lines 2-6, wherein the first level of encryption is defined and column 18, lines 45-52, Bailey) and retrieving second authentication data from the second computer (column 17, lines 14-16, wherein the second encryption is performed and defined and column 18, lines 53-59, Bailey), wherein said first authentication data defines a first password and said second authentication data defines a second password (Figure 1, diagram 50, wherein decrypt is the process of converting encrypted data or text back to plain data or text, Figure 10, diagram 274, wherein pass code is defined and column 17, lines 17-21, Bailey), and comparing the first password to the second password to determine if the passwords match (Figure 10, diagram 274, wherein pass code is associated with element to data security card, Bailey), and wherein the one or more files are stored on the second computer if the first and second passwords are determined to match (Figure 13, diagram 216 and column 23, lines 60-63, wherein generated code matches a code in the database, Bailey).

**Claim 8:**

Regarding claim 8, Bailey teaches retrieving, at the second computer, a first identification tag from the portable computer readable medium (Figure 10, diagram 262, wherein file to be examined, Bailey), said identification tag being randomly generated by the first computer to identify the one or more files to be transferred from the portable computer readable medium to the second computer (Figure 10, diagram 272, Bailey)

sending an authentication request including the first identification tag to the first computer via the communication network (Figure 1, diagrams 36 and 44, wherein transmission medium is interpreted to be the type of cable/wireless system used to connect the network devices, Bailey);

receiving, at the first computer, the authentication request and the first identification tag (column 6, lines 15-21, Bailey); comparing, at the first computer, the received first identification tag with an second identification tag being stored on the originating computer to determine if the tags match (column 23, lines 60-63, Bailey), wherein the second identification tag corresponds to a tag previously generated by the first computer to identify a particular file or particular set files being transferred to a portable computer readable medium (column 6, lines 64-67, Bailey);

requesting, at the first computer, input from an originating user to confirm back up is authorized if there is a matching tag (column 23-36, wherein comparing and key is obtained, Bailey);

sending a reply including the user input to the second computer via the communication network (column 16, lines 39-42, wherein data security card transfers the corresponding code, Bailey); and

determining whether the first computer is authorized as a function of the user input included in the reply (Figure 10, all features and column 57-67, wherein encoding process is defined and initialized and column 16, lines 9-11, wherein if the file is an encoding type file, the method follows yes, where the file data is read, Bailey).

**Claim 9:**

Regarding claim9, Bailey teaches wherein storing files includes retrieving storage amount data and file storage data from a destination database (column 7, lines 63-67, Bailey), said storage amount data defining a maximum amount of storage space available on the second computer for storing files transferred from the first computer (column 9, lines 4-8 and lines 23-30, Bailey), and said file storage data specifying a current amount of storage space on the second computer being used for storing files from the first computer (column 9, lines 4-14, Bailey), and wherein storing files further comparing the storage amount data to file storage data to determine if storage space is available (column 9, lines 47-56), and wherein the back-up copies of the one or more designated files stored on the portable computer readable medium are stored on the second computer if storage space is determined to be available (column 9, lines 57-67, Bailey).

**Claim 10:**

Regarding claim 10, Bailey teaches wherein designating files for transfer (column 11, lines 4-5, wherein the higher rated file will be transmitted to the backup site, Bailey) further includes:

designating a destination identifier associated with the second computer (Figure 8, diagram 432, Bailey);

designating storage schedule data for back-up copies (column 11, lines 9-10, wherein the time of most recent backups, Bailey); and

storing the back-up copies of the designated one or more files, the designated destination identifier, and/or the designated storage schedule data in an originating database (column 11,

lines 5-17, wherein the time of most recent backup is defined and lines 35-45, wherein transmission file is a file of finite size, and contents of the transmitted to the backup site, Bailey).

**Claim 11:**

Regarding claim 10, Bailey teaches wherein designating files includes displaying a first input form on a display linked to the first computer, said first input form receiving input data from a user, and said input data designating the one or more files to be copied and transferred to the second computer, designating the one or more back-up times, and/or designating the destination identifier (column 11, lines 5-17, wherein the time of most recent backup is defined and lines 35-45, wherein transmission file is a file of finite size, and contents of the transmitted to the backup site, Bailey).

**Claim 12:**

Regarding claim 12, Bailey teaches retrieving one or more stored files from the second computer in response to a request received from the originating user (column 18, lines 58-67, Bailey);

transferring the retrieved files to the portable computer medium (column 5, lines 26-33, wherein the backup computer includes a memory that includes a program registry that stores a list of many commonly used, commercially available programs, and wherein the client files, i.e. interpreted to be the first computer, to be backed up are stored on a backup storage medium and column 10, lines 30-34, wherein transmitting files from the client site to the backup site in sequence based on the priority of the files and capacity of the transmission medium, Bailey); and

delivering the portable computer medium to the originating user (column 10, lines 57-60, wherein available transmission time can be set in several ways including a default value, a client determined value, and a value transmitted by the backup site to the client site, Bailey).

**Claim 14:**

Regarding claim 14, Bailey teaches wherein the originating user determines the target amount (column 11, lines 35-38, wherein finite size is interpreted to be limited or restricted in nature, Bailey).

**Prior Art of Record**

1. Bailey, III (US Patent No. 5,659,614) discloses a method and system for prioritizing, securing, and reducing the amount of data transmitted and stored during the creation of a backup copy of file data.
2. McClain et al (US Patent No. 6,049,874) discloses a system backs up computer files to a remote site via modem, LAN, WAN, or other network device.

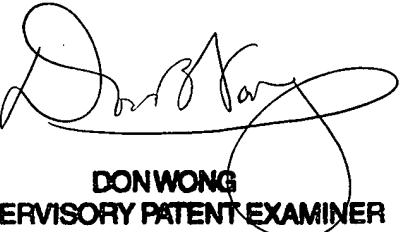
**Point of Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene R. Rose whose telephone number is (571) 272-0749. The examiner can normally be reached on 8:00am - 4:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Helene R Rose  
Technology Center 2100  
March 20, 2006



DON WONG  
SUPERVISORY PATENT EXAMINER